

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ALAN B. AND ELLEN L. MARTIN	:	ORDER
	:	DTA NO. 825512
for Redetermination of a Deficiency or for Refund	:	
of New York State Personal Income Tax under	:	
Article 22 of the Tax Law for the Year 2005.	:	
_____	:	

Petitioners, Alan B. and Ellen L. Martin, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 2005.

Pursuant to 20 NYCRR 3000.9(a)(4), the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, dated March 22, 2013, on the grounds that the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition because the petition was not filed in protest of a statutory notice. The Division of Taxation, by its representative, Amanda Hiller, Esq., (John E. Matthews, Esq., of counsel) submitted a letter dated April 1, 2013 in support of the proposed dismissal. Petitioners, appearing pro se, submitted a letter dated April 10, 2013 in opposition to the proposed dismissal. Accordingly, the 90-day period for the issuance of this order commenced on April 10, 2013. Based upon the pleadings in this matter, and the responses by the Division of Taxation and petitioners, Thomas C. Sacca, Administrative Law Judge, renders the following order.

ISSUE

Whether Division of Tax Appeals has subject matter jurisdiction over the petition filed in this matter.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioners, Alan B. and Ellen L. Martin, a Notice and Demand for Payment of Tax Due (Assessment number L-036243009), on March 21, 2012. The notice assessed personal income tax for the year 2005 in the amount of \$2,843.00, plus penalty and interest. As explained in a Notice of Additional Tax Due previously issued to petitioners on June 8, 2011, the assessment was based upon information received from the Internal Revenue Service indicating petitioners had filed a federal tax return with a New York address but had failed to file a New York personal income tax return for the year 2005.

2. On February 7, 2013, the Division of Tax Appeals received a petition challenging the forgoing notice.¹

3. On March 22, 2013, the Division of Tax Appeals issued a Notice of Intent to Dismiss Petition, which stated, in pertinent part:

The petition in this matter appears to have been filed in protest of four Notice and Demands for Payment of Tax Due, Assessment Nos. L-036243009, L-038204652, L-037711748 and L-038847711 issued on March 21, 2012, June 22, 2012, May 1, 2012 and December 5, 2012, respectively. These notices are insufficient to confer jurisdiction upon the Division of Tax Appeals to consider the merits of the petition.

4. The Division submitted a letter stating that it agreed with the proposed dismissal.

¹ The petition lists three other assessment numbers. However, petitioners did not include a copy of these other assessments with the petition and, therefore, it is impossible to address these documents (*see* 20 NYCRR 3000.3[b][8]).

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction whose powers are confined to those expressly conferred in its authorizing statute (*Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v. Tax Appeals Tribunal*, 151 Misc 2d 326 [1991]). Therefore, in the absence of legislative action, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*Matter of Hooper*, Tax Appeals Tribunal, July 1, 2010).

B. In this matter, the petition challenges a Notice and Demand that was issued because petitioners failed to file a New York personal income tax return although they had filed a federal tax return with a New York address. Upon review, it is concluded that this proceeding must be dismissed because the Division of Tax Appeals lacks jurisdiction to review the document. The Tax Appeals Tribunal is authorized to “provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006[4]). In this instance, the right to a hearing is specifically denied. Tax Law § 173-a(2) provides that any notice and demand issued to a taxpayer without the issuance of a notice of deficiency because of a mathematical or clerical error on a return or for failure to timely pay the tax due shown on a return or the issuance of a notice of additional tax due “shall not be construed as a notice which gives a person a right to a hearing.” Accordingly, the Division of Tax Appeals is without authority to proceed (*see Matter of Chait*, Tax Appeals Tribunal, April 22, 2010).

C. The petition of Alan B. and Ellen L. Martin is dismissed.

DATED: Albany, New York
June 20, 2013

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE